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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~206~~ 311

THE STEAM-TUG ADMIRAL FARRAGUT, GEORGE WOOD AND ISAAC ALBERTSON, CLAIMANTS, APPELLANTS,

vs.

THE BARGE L. NEWMAN, RICH'D SUTLIFF OWNER, AND GURNIE BRICK, OWNER OF THE CARGO OF SAID BARGE, AND THE PHŒNIX INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 20, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 296.

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vs.

THE BARGE L. NEWMAN, RICH'D SUTLIFF OWNER, AND GURNIE BRICK, OWNER OF THE CARGO OF SAID BARGE, AND THE PHŒNIX INSURANCE COMPANY.

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INDEX.

	Original.	Print.
Certificate of appeal to Circuit Court	2	1
Record of District Court	3	1
Libel	5	2
Stipulation, costs	13	6
Attachment	15	7
Claim	17	7
Stipulation of claimants	18	8
Answer of Wood and Albertson	20	10
Depositions on behalf of libellants	30	14
respondents	61	25
Decree and reference to commissioner	84	36
Report of commissioner	86	36
Final decree	89	38
Appeal	90	38
Certificate	90	38
Decree of Circuit Court and reference to commissioner	92	39
Commission	94	39
Interrogatories	95	40

	Original.	Print.
Depositions	98	41
Commissioner's report	112	46
Respondent's exceptions	115	47
Libellant's exceptions	115	47
Final decree	119	48
Appeal	119	48
Clerk's certificate	121	48

1 Pleas before the honorable the judges of the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit of October sessions, 1866, No. 3, in admiralty:

Be it remembered that heretofore, to wit, at a Circuit Court of the United States in and for the said district, on the twenty-ninth day of September, anno Domini one thousand eight hundred and sixty-six, George Wood, and Isaac Albertson, owners of the steam-tug Admiral Farragut, by Robert P. Kane, esquire, their proctor, comes and files a certificate of appeal from a decree in the District Court of the United States in and for the eastern district of Pennsylvania, in admiralty, which being read is in the words, and of the tenor following, to wit:

2 *Contract.*

RICHARD SUTLIFF, OWNER AND MASTER OF THE barge L. Newman, and Gurnie Brick, of the city of New York, owners of the cargo of said barge, and the Phœnix Insurance Company of the city of New York,
vs.
THE STEAMER-TUG ADMIRAL FARRAGUT.

And now this twenty-sixth day of September, A. D. 1866, R. P. Kane, esquire, proctor for the respondents, George Wood and Isaac Albertson, owner of the steamer-tug Admiral Farragut, pray leave to appeal from the decree of the said District Court to the next Circuit Court of the United States for the eastern district of Pennsylvania, in the third circuit, which is allowed upon security being given. See reg.

And thereupon security entered and approved 1866, September 29th.

From the record—

[SEAL D. C. U. S.] CHARLES S. LINCOLN,
Pro Cl'k Dis. Ct. U. S.

And afterwards, to wit, on the first day of October, in the year last aforesaid, the said Robert P. Kane, esquire, proctor for the said respondents, brings into court here and files the record of the proceedings in the said District Court of the United States for
3 the eastern district of Pennsylvania, which being read, is in the words and figures following to wit:

Index.

	Page.
Libel	2
Stipulation costs	9
Attachment	10

Claim 11
Stipulation of claimant 12
Answer of George Wood and Isaac Albertson, owners of the steam tug 15
Depositions on behalf of libellants 23
Do. do. respondents 49
Order of appointment of assessors, if asked for by respondents 70
Decree and reference to commissioner, to ascertain damages .. 71
Report of commissioner 72
Final decree 75
Appeal 76
Certificate 76

4 In the District Court of the United States in and for the eastern district of Pennsylvania:

Contract.

RICHARD SUTLIFF, OWNER AND MASTER of the barge L. Newman, and Gurnie Brick, of the city of New York, owners of the cargo of the said barge,
vs.
THE STEAM-TUG ADMIRAL FARRAGUT. } In admiralty.

Pleas before the honorable the judge of the District Court of the United States in and for the eastern district of Pennsylvania. It is thus contained:

Be it remembered that on the thirtieth day of March, A. D. 1866, Morton P. Henry, esquire, proctor of said court, comes into the said court and exhibits the libel and complaint of Richard Sutliff, owner and master of the barge L. Newman, Gurnie & Brick owners of the cargo, and the Phœnix Insurance Company, of the city of New York, against the steamer-tug, Admiral Farragut, in a cause of damage sur contract civil et maritime, which being read and filed, is in the words and figures following, to wit:

5 To the Honorable John Cadwalader, judge of the District Court of the United States for the eastern district of Pennsylvania, in admiralty:

The libel of Richard Sutliff, owner and master of the barge L. Newman, of Ithica, in the State of New York, and of Gurnie & Brick, of the city of New York, owners of the cargo on board said barge, and of the Phœnix Insurance Company of the city of New York, insurers of the said cargo against the steam-tug Admiral Farragut, whereof is master, in a cause of damage, civil and maritime, alleges and and articulately propounds as follows:

First. That this libellant is the owner of the barge L. Newman, a vessel of the burthen of 125 tons custom-house measurement, which,

at the time of the happening of the damage and injury hereinafter mentioned, was engaged in navigating the river Delaware, are within the ebb and flow of the tide, and the admiralty and maritime jurisdiction of this honorable court.

Second. That on the evening of Friday, March 24th, 1865, the said barge left Cattell's wharf, at the port of Philadelphia, in tow of the steam-tug Admiral Faragut, on a voyage to the port of New York. That the said steam-tug was employed to tow the said
6 barge as far as Bordentown, in the State of New York, at the mouth of the Delaware and Raritan canal, under a contract of towage for a reasonable reward, to be paid to the owners of the said steam-tug on the arrival of the said barge at Bordentown.

Third. That the said barge is a vessel of the burthen of 125 tons, and was tight, staunch, well found and manned in all respects, and suited for the navigation of the river Delaware. That the said barge had on board a cargo consisting of 12,700 bushels of oats, consigned to Gurnie & Brick, at New York, who were the owners thereof, which cargo the master had undertaken to convey and deliver for the stipulated freight of six cents per bushel, as set forth in the bill of lading, a copy of which is hereto annexed, marked (A,) and that the said cargo was insured in the Phœnix Insurance Company of New York for the sum of twelve thousand dollars.

Fourth. That the said barge was attached by lines to the port side of the said tug, which had another barge in tow on the starboard side, and that the course and direction of the same was solely under the control and direction of the master of the said steam-tug. That on the morning of the 25th March, 1865, between the hours of three and four a. m., and before daylight, while proceeding up the river Delaware, the said barge was, by the gross negligence and
7 want of proper care and management of the master and pilot of the said steam-tug, and by the reason of the ignorance of the said master of the channel and navigation of the said river Delaware, towed out of the proper course in the channel of said river, while so attached to the steam-tug, and in charge thereof, and run aground upon a point or bar which makes out from the west side of the said river about three quarters of a mile above the town of Florence, and some distance from the channel.

Fifth. That the draft of water of the said barge was five and a half feet on an even keel, and that there was sufficient depth of water in the channel of said river to have navigated the same with safety, if proper care and caution had been exercised by those in charge of the said steam-tug.

Sixth. That about twenty minutes after the barge struck the ground the steam-tug cast off her lines, and after laying at Florence until daylight, proceeded with the other barge in tow up the river and abandoned the barge L. Newman; that about half past five a. m., the tide having fallen, the said barge broke in the centre, and the water rushed in and filled the said barge, which thereby became a wreck and totally lost to the owner thereof, and that no proper

efforts were made by those in charge of the steam-tug to save the said barge after she became stranded as aforesaid.

8 Seventh. That the value of the said oats was $12,065 and upwards; that the owners thereof have abandoned the same to the underwriters, who have excepted the same, and that after notice to the owners of the said steam-tug—a copy of which said notice is hereto annexed, marked exhibit B, to which no reply has been received—the cargo has been sold for the interest of all parties for the sum of $3,000, as it lies on board the said cargo, which was the largest sum which could be obtained for the same, and which amount is credited as salvage, and is to be deducted from the said loss. That the said barge was of the value of four thousand dollars, and is a total loss to the owner; that in addition thereto the owner of the said barge was deprived of the stipulated freight of $762 for the said voyage, less the necessary expenses of tolls and towage for said voyage, amounting to $200 or thereabouts, making the total damage sustained by the libellants by reason of the premises, $13,527, as follows:

Loss on boat	$4,000
" freight	562
" cargo	9,065
	$13,627

Eighth. That the said loss was caused solely and entirely by reason of the gross carelessness and neglect and want of proper management of those in charge of the said steam-tug, and by rea-

9 son of their ignorance of the navigation of the river Delaware, without any fault on the part of those in charge of the said barge; and that all and singular the premises are true and within the admiralty and maritime jurisdicton of this honorable court.

Ninth. That the said steam-tug Admiral Farragut now lies at the port of Philadelphia, and within the jurisdicton of this honorable court.

Tenth. That the value of the said steam-tug Admiral Farragut is sixteen thousand dollars, or thereabouts; wherefore the libellants pray that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said steam-tug Admiral Farragut, her tackle, apparel and furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid.

And that this honorable court will be pleased to pronounce for the damages which these libellants have sustained as aforesaid, with costs, and these libellants may have such further and other relief as in the law and justice they may be entitled to receive in the premises.

10 R. C. McMURTRIE,
Pro. for Phœnix Ins. Company.

Sworn to and subscribed this day of , A. D. 1865, before me.

R. SUTLIFF.

R. C. McMURTRIE,
MORTON P. HENRY,
Proctors for Libellants.

Richard Sutliff, being duly sworn according to law, doth depose and say that the facts set forth in the foregoing libel are true.

R. SUTLIFF.

Sworn to and subscribed bofore me this thirtieth day of March, A. D. 1865.

CHARLES S. LINCOLN,
Pro Cl'k Dist. C'rt.

11 *Exhibit A.*

Shipped in good order and condition by Josiah Bryan & Co., in and upon the boat called the L. Newman, whereof Capt. R. Sutliff is master for the present voyage, now lying in the port of Philadelphia and bound for New York, twelve thousand seven hundred bushels of oats, more or less, all on board to be delivered; thirty-seven hundred bushels in bin on deck at capts. on boat risk, being marked and numbered as in the margin, to be delivered in the like order and condition at the aforesaid port of New York, (the dangers of the sea only excepted,) unto Gurney & Brick or to their assigns, he or they paying freight for the said goods at the rate of six cents per bushel, weight without primage and average accustomed.

In witness whereof the master or purser of the said vessel hath affirmed to 3 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

R. SUTLIFF.

Dated at Philadelphia, March 25, 1855.

Paid on ac.: Advanced fit. two hundred and seventy-five dollars, $275; Gurney & Brick, No. 38 Broadway, N. Y.; four working days to unload; extra towage to be paid by the consignees, or whatever the custom is in N. York.

12 *Exhibit B.*

MARCH 28TH, 1865.

GENTLEMEN: On behalf of the Phœnix Insurance Company of New York, I beg to call your attention to the case of the barge L. Newman, which was run ashore on Saturday, about 4 o'clock a. m., a short distance above Florence, while in the tow of your tug-boat Admiral Farragut, and in consequence the cargo so damaged that it has been abandoned to the underwriters.

Before taking any steps I would ask you to say whether you desire to take charge of the cargo and indemnify the insurer; if so, let me know at your earliest possible convenience, as time may be important.

You can address the company direct at New York, or our agent, Mr. Sherred, No. 220 Walnut st.

The amount of our policy is $12,000, and the cargo was worth $65 more than the amount insured.

Yours, resp'y,

MAYER.

Mess. Albertson & Wood.

And stipulation for costs being entered is in the words and figures following, to wit:

13 In the District Court of the United States for the eastern district of Pennsylvania.

Plea civil and maritime for contract.

RICHARD SUTLIFF, OWNER AND MASTER of the barge L. Newman, of Ithica, and Gurnie & Brick,
vs.
THE STEAM-TUG ADMIRAL FARABGUT.

And now, to wit, on this thirtieth day of March, A. D. 1865, Richard Sutliff and James H. Sherwood, residing 2009 Chestnut street, in the city of Philadelphia, enter into a stipulation in the words following, to wit:

UNITED STATES, *Eastern district of Pennsylvania, ss*:

And on this thirtieth day of March, A. D. 1865, and in the eighty-ninth year of the independence of the said United States, personally appeared Richard Sutliff and James H. Sherwood, and by stipulation in due course of law acknowledge themselves to be indebted to the United States of America for the use of all persons who may be interested in the premises, in the sum of two hundred and fifty dollars, to be levied of their and each of their goods and chattels, land and tenements, on condition that if the libellants in the above action shall pay all costs which by the decree, mandate or practice of the court may become liable to pay, then this stipulation to be void and of no effect, otherwise to be and remain in full force and virtue, and execution to issue thereon forthwith for the
14 amount of such costs at the instance of any persons interested as aforesaid.

[SEAL.] R. SUTLIFF.
[SEAL.] JAS. H. SHERRERD.

Taken, acknowledged and subscribed this thirteenth day of March, A. D. 1865, in open court.

CHARLES S. LINCOLN,
Pro Clerk, D. C.

15 And thereupon process is issued in the words following, to wit:

UNITED STATES, *Eastern District of Pennsylvania, sct:*

John Cadwalader, judge of the District Court of the United States in and for the eastern district of Pennsylvania, to the marshal of the same district, greeting:

You are hereby commanded, in the name and by the authority of the United States, forthwith to seize and attach the steam-tug or vessel called the Admiral Farragut, whereof is master, together with all and singular her tackle, apparel and furniture, as the same now are, and the same safely keep, to abide the final order and decree of this court in a certain plea, civil and maritime, herein prosecuted against the said steam-tug Admiral Farragut, &c., by Richard Sutliff, owner and master of the barge L. Newman, and Gurnie & Brick, of the city of New York, owners of the cargo on board said voyage, libellants for damages, contract, &c. And you are further commanded, in the name and by the authority aforesaid, to cite and admonish the said master, and generally all others herein concerned, so that they be and appear before me at a special session of this court, to be holden at the room of the District Court of the United States, in the city of Philadelphia, on the fourteenth day of April next, at eleven o'clock in the forenoon of the same day, then and there to show cause, if any they have, why the said steam-tug, &c., should not be condemned, &c., for the payment of the said damages, &c. And have you then there this writ.

Given under the seal of the said court, at Philadelphia, this thirtieth day of March, A. D. 1865, and in the eighty-ninth year of the independence of the United States.

CHARLES S. LINCOLN,
Pro Clerk District Court U. S.

[50 cts. United States inter. revenue stamp.]

16 On which said 14th day of April, A. D. 1865, the said marshal makes return thereof in the words following, to wit:

APRIL 1ST, 1865.

By virtue of the within writ I have attached the within-named steam-tug Admiral Farragut, and have the same in my custody.

So answers WILLIAM MILLWARD,
U. S. Marshal.
Per THOS. B. PATTERSON,
D. Marshal.

17 And on the first day of April, A. D. 1865, Isaac Albertson and George Wood come and make claim as owners of the said steam tug Admiral Farragut; and the same, being filed, is in the words following, to wit:

In the District Court of the United States in and for the eastern district of Pennsylvania.

Plea civil and maritime for damage.

RICHARD SUTLIFF AND GURNIE & BRICK
vs.
THE STEAM-TUG CALLED THE ADMIRAL FARRAGUT. } In admiralty.

And now Isaac Albertson and George Wood intervening their interest in the steam-tug called the Admiral Farragut, appear before the honorable court and make claim to the said steam-tug, her tackel, apparel and furniture, as the same are attached by the marshal, under process of this court, at the instance of Richard Sutliff and others; and the said Isaac Albertson and George Wood aver they are the true and bona fide owners of the said steam-tug, and that no other person is the owner thereof; and that one Charles Dougherty is master of the said steam-tug, and the true and lawful bailee thereof for the owner thereof; wherefore they pray to be admitted to defend accordingly.

ISAAC ALBERTSON.
GEORGE WOOD.

Sworn and subscribed in open court, this first day of April, A. D. 1865.

CHARLES S. LINCOLN,
Pro Clerk District Court U. S.

And afterwards, to wit, on the same day the said claimants appear in open court and enter into stipulation with Joseph Albertson and Charles Elwood as sureties in the words following, to wit:

18 In the District Court of the United States for the eastern district of Pennsylvania.

Plea civil and maritime for

RICHARD SUTLIFF, OWNER AND MASTER OF THE Barge L. Newman, and Gurnie & Brick, of the city of New York, owners of the cargo on board said barge,
vs.
THE STEAM-TUG ADMIRAL FARRAGUT.

And now, to wit, on this first day of April, A. D. 1865, Isaac Albertson, George Wood and Joseph Albertson and Charles Elwood enter into a stipulation in the words following, to wit:

UNITED STATES, *Eastern District of Pennsylvania, ss:*

Be it remembered, that at a special District Court of the United States, holden at Philadelphia, in and for the eastern district of Pennsylvania, on the first day of April, A. D. 1865, and in the

eighty-ninth year of the independence of the said United States, before the Honorable John Cadwalader, judge of said court, come Isaac Albertson, George Wood and Joseph Albertson and Charles Elwood, who, freely and voluntarily submitting themselves to the urisdiction of the said court, acknowledge themselves to be jointly severally indebted unto Richard Sutliff and Mess. Gurnie & Brick in the sum of fifteen thousand dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements of the said Isaac Albertson, George Wood and Joseph
19 Albertson and Charles Elwood, to the use of the said Richard Sutliff and Mess. Gurnie & Brick, upon condition. Whereas a suit is now pending in the said court for damages sur contract, wherein the said Richard Sutliff and Mess. Gurnie & Brick are the libellants, against the steam-tug Admiral Farragut and the said Isaac Albertson and George Wood, claimants. Now if the said claimants shall well and truly abide by all orders, interlocutory or final, of the said court, and of any Apellate Court in which the said suit may hereafter be depending, and shall fulfill and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on their part, then this stipulation shall be void; otherwise in force, and execution may issue by virtue thereof, at one and the same time, against any or all the parties to this stipulation.

[SEAL.] ISAAC ALBERTSON.
[SEAL.] GEORGE WOOD.
[SEAL.] JOS. ALBERTSON.
[SEAL.] CHARLES E. WOOD.

Taken, acknowledged and subscribed in open court on the day and year above written.

CHARLES S. LINCOLN,
Pro Clerk.

The above-named Isaac Albertson and George Wood, being severally sworn, depose and say: That they are permanently householders within this district, and that they are worth, the said Joseph Albertson, ten thonsand dollars, and the said Charles E. Wood the sum of fifteen thousand dollars, after payment of their just debts and liabilities; and thereupon it is ordered, that a writ of restitution issue to the marshall directing him to restore the said steam-tug to the said claimant, upon payment to him of his costs and the necessary expenses by him incurred.

Taken before Hon'ble John Cadwalader, judge. Present: M. P. Henry, proctor for libellants, and R. P. Kane, for claimants.

20 And thereupon writ of restitution issued directed to the marshal, which is in the words and figures following, to wit:

UNITED STATES, *Eastern District of Pennsylvania, ss:*

John Cadwalader, judge of the District Court of the United States in and for the eastern district of Pennsylvania, to the marshal of the same district, greeting:

You are hereby commanded to deliver and restore unto Charles Dougherty, master and bailee of Isaac Albertson and George Wood, claimants of the steam-tug or vessel called the Admiral Farragut, with her tackle, apparel and furniture, or so much thereof as was lately and is now in your custody and possession by virtue of a writ of attachment lately issued out of said court, at the suit of Richard Sutliff and others, libellants for damages sur contract, and how you shall have executed this writ, make return to me at a special session of said court, to be holden at the city of Philadelphia, on the seventh day of April, instant, and have you then there this writ.

Given under the seal of said court, at Philadelphia, this first day of April, A. D. 1865, and in the eighty-ninth year of the independence of the said United States.

CHARLES S. LINCOLN,
Pro Clerk District Court U. S.

Endorsed: U. S. District Court, in admiralty. Writ to restore. On which 7th day of April, A. D. 1865, being the day of the return of the said writ, the said marshal makes return thereof as follows: "I have restored the within-named tug, Farragut, to the owners, as by the within writ I was commanded. So answers William Millward, U. S. marshal east. dist. of Penn'a, per Thos. B. Patterson, D. marshal.

Afterwards, to wit, on the 16th day of June, A. D. 1866, Robert P. Kane, esq., appears in court and presents the answer of George Wood and Isaac Albertson, which, being read and filed, is in the words and figures following, to wit:

To the Honorable John Cadwalader, judge of the District Court of the United States in and for the eastern district of Pennsylvania, sitting in admiralty:

The answer of George Wood and Issac Albertson, owners of the steam-tug called the Admiral Farragut, to the libel and complainant of Richard Sutliff, owner and master of the barge L. Newman, and of Gurnie & Brick, owners of the said cargo, against the steam-tug Admiral Farragut, in a cause of damage, civil and maritime.

And thereupon the said George Wood and Isaac Albertson
22 allege and articularly propound as follows:

1. First. That they do not know the libellant, Richard Sutliff, as the owner of the barge L. Newman, of the truth of which

allegation they pray that he may be required to exhibit good and sufficient proof.

2. Second. To the second article of said libel they make answer: That the allegations therein contained are true; and further, that the contract under which the steam-tug Admiral Farragut was employed to tow the barge L. Newman to Bordentown, was such a contract of towage as is usual between tug and barge on the river Delaware, and that the consideration stipulated to be paid the tug was the charge customarily made by tugs performing a like service.

3. Third. To the third article of said libel they make answer: That they are ignorant of the matters therein set forth. and they pray that the libellants may be required to prove the truth thereof.

4. Fourth. To the fourth article of said libel they make answer: That it is true that the barge L. Newman, whilst in tow of the
23 steam-tug Admiral Farragut, was run aground upon a bar or flat in the river Delaware, but that these respondents allege this was not occasioned by the fault or negligence of those having charge of the steam-tug, and that the true history of the matter is as follows:

The tug left Philadelphia on the evening of the 24th of March, 1865, having two barges in tow lashed in the usual manner to her sides; one of these, the L. Newman, was attached on her port, the other on her starboard side; that the tug was in charge of an experienced pilot who was familliar with the navigation of the river between Philadelphia and Bordentown; and that the night was sufficiently clear to enable him to distinguish the points on the river shore, by which he steered. The tug and her two, proceeding on their trip, passed Florence Heights, a distance of twenty-two miles from Philadelphia, a little after midnight. On the morning of the 25th, when opposite a steering point on the Florence shore known as the "little white house," the tug altered her course and steered for a barn on Newbold island, an island which lies about a mile above. This alteration in her course was the proper and usual one, ren-
24 dered necessary in order to pass from the channel on the New Jersey side to that on the Pennsylvania side of the river. This course leads over a shoal or bar which runs out from the lower end of Newbold's island, and which separates the two channels, and which all vessels bound to Bordentown are obliged to cross. It is a flat bar, having a soft bottom which shifts or changes by the action of the river, and the best water upon it, over which the regular course from channel to channel leads, is of varying and unreliable depths, and is of a width of between seventy-five and one hundred yards. It was on this bar that the barge L. Newman grounded; the tug and the barge on the starboard side did not ground. That it is a common matter for a barge in tow to ground upon this bar, and that this is not attended with peril, the bottom being flat and soft; that in such case, a tug of sufficient power can readily, at a proper stage of the tide, drag the barge off the bar. That the grounding of the barge L. Newman was not occasioned by any negligence or want of skill on the part of those having the charge of the steam-tug Admiral

Farragut, but solely by causes not within their control, and
25 against which they could not guard. That every precaution was taken which was requisite to secure the transit over the bar of their tow; that soundings were made at short intervals from the time the tug headed for the barn on Newbold's island until the moment of the grounding of the barge; that a sharp lookout was kept, and that the tug moved at a proper rate of speed through the water. And further, these respondents allege, that tugs with tows of the same draft of water as that of the barge L. Newman do constantly pass in safety over the bar at the point at which she grounded, and this at the same stage of the tide at which the misadventure complained of occured.

5. Fifth. To the fifth article of said libel they make answer: That they do not believe that the draft of water of the barge L. Newman at the time she grounded as aforesaid was five and a-half feet. That the barge was flat bottomed, built for the lake trade, of light construction, and heavily laden with grain. That they have already answered that the steam-tug was navigated with proper care and caution.

26 6. Sixth. To the sixth article of said libel they make answer: That it is not true, as in the said article is alleged, that no proper efforts were made by those in charge of the steam tug to save the barge after she became stranded, but that on the contrary, the steam-tug did all in her power, after the barge had grounded, to pull her off the bar; and that these respondents believe that their tug would have succeeded in doing so had she not been encumbered by the barge attached to her starboard side.

That there was running at the time a heavy current setting to the Pennsylvania shore, occasioned by a freshet such as during the spring months is frequent in the Delaware river, and that the barge on the starboard side was not provided with an anchor and could not with safety be cast adrift. That the steam-tug, finding it not in her power, with a barge lashed to her side, to pull off the grounded barge, was compelled to leave in order to tow the former to a place where she could be safely moored. That the tug returned in time for the next flood-tide, in order to renew her effect to pull the barge off the bar, and that the same were abandoned at the request of the libellant Richard Sutliff, who was the acting master thereof.

7. Seventh. To the seventh article of said libel they make
27 answer: That they do not know whether the several matters alleged therein be true, and that they pray that the libellants may be compelled to exhibit good and sufficient proof thereof. And further answering, they say that as soon as it became known to these respondents that the barge L. Newman had grounded, and that the same, together with the cargo thereon, was likely to suffer damage, they chartered a barge of sufficient capacity, and employed a number of laborers accustomed to the unloading of vessels, and kept their tug fired up in readiness to carry the same to the said barge L. Newman, with the intention of discharging the cargo thereon, and getting the said barge afloat. That on the morning of Sunday, the 26th

of March, the morning next following the grounding of the barge, they saw the libellant, Richard Sutliff, who was the master and claimed to be the owner of thereof, and requested his permission to proceed to the said barge and take out her cargo, stating that they had all things in readiness for that purpose, but that the said Richard Sutliff not only declined their offer but forbade them to do anything in the matter.

8. Eighth. To the eighth article of said libel they make
28 answer as they have already answered, that the grounding of the barge L. Newman was not occasioned by any negligence or want of skill on the part of those having charge of the steam-tug Admiral Farragut, but solely by causes not within their control, and against which they could not guard.

9. Ninth. To the ninth article of said libel they make answer: That the steam-tug Admiral Farragut was at the time of the issuing of the attachment in this case, within the eastern district of Pennsylvania.

10. Tenth. To the tenth article of said libel they make answer: That the steam-tug Admiral Farragut, at the time of the grounding of the barge L. Newman, was of a value less than sixteen thousand dollars, and they pray that the true value of said steam-tug may be ascertained by an appraisement had in due form under the order of this court.

11. Eleventh. That all and singular the premises are true, in verification whereof, if denied, these respondents crave leave, &c.
29 Wherefore, they pray that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

R. P. KANE, *Proctor, &c.*

GEORGE WOOD.
ISAAC ALBERTSON.

Sworn to and subscribed before me this 16th June, 1866.

W. GRIER HIBLER,
U. S. Commissioner.

30 In the District Court of the United States for the eastern district of Penna.

Depositions of witnesses on behalf of the libellant, read and filed on the 8th June, 1866.

RICHARD SUTLIFF *et al.*
vs.
THE STEAM-TUG ADMIRAL FARRAGUT. } In admiralty.

Depositions of witnesses on behalf of the libellant in the above case, taken before Aubrey H. Smith, commissioner of the United States for the eastern district of Pennsylvania, at his office, No. 137 south 5th street, in the city of Philadelphia.

APRIL 3D, 1865.

Present: Mr. M. P. Henry for the libellants, R. P. Kane for the respondent.

Melvin Hill, a witness produced on behalf of the libellant, being duly sworn, saith:

I am thirty-six years old. I know the barge L. Newman. I have been employed on her two years, the 29th day of April. She is, or was, a first-class lake boat; she would carry two hundred and
31 ten or two hundred and fifteen tons. She came out two years ago last fall. I mean out from the ship builder's. Richard Sutliff is the owner; Richard Sutliff was also the master. She was running in the grain trade, as a general thing. She ran from Buffalo to New York on the Hudson river and Erie canal. I was on her also on her last voyage. It was from Philadelphia to New York. The cargo was 13,700 bushels of oats. The captain was on board besides myself. The Admiral Farragut took us in tow. We left Cattell's wharf between six and seven o'clock of the evening of Friday, the 24th day of March. We were towed alongside the tug on her left hand side. We had a new line at the bow, the stern line and a spring line. The tug had another barge on the right hand side in tow. This was all she had. We left Cattell's wharf, and ran up to the foot of Callowhill street; I think it was to wait for the first of the flood up the river. We went up opposite Richmond, and there stuck to the bottom, and remained there about fifteen minutes. It was nearer the Jersey than the Philadelphia shore, I should think. She got us off, and we went on up the river. We struck once, not to hang. I am not enough acquainted with
32 the river to say where it was. Nothing else happened till we hit where we lay now. We ran on the bar, I should think, nearly a mile above Florence, on the Pennsylvania side of the channel. This was about 3 o'clock in the morning of Saturday, the 25th day of March; it was before daylight. The night was a very little cloudy. There was a light breeze blowing. The tide was about high water on the first of ebb-tide. I cannot tell exactly how

fast the barge was going. I think her bow struck first; I cannot tell exactly; I was not on deck when she struck. I came on deck immediately after. I felt her strike. The tug tried to back us off for probably five or ten minutes. She then told us to let go of our breast lines—the breast lines are the bow and stern lines—and tried to jerk her stern around towards the channel, which was towards the Jersey shore, by our spring line, which was fastened to our stern. The spring line was from our stern to the tug's bow. She did not succeed in moving us. The pilot told the captain to slack up his spring line, and they throwed it off of the tug. The tug then took the other barge down to the Florence dock and left her. They
33 came back with the tug and asked the captain how much he was out of water. He told them she was six or seven inches out of the water; the tide had left her that much. He told the captain that he would come next day and jerk him off at high tide. When he left us at the last time the captain asked him what kind of a bottom it was. He said it was a soft one, and he did not think it would hurt him to lay there. It was before daylight when he left us. The tug took or passed us with the other barge about 7 or 8 in the morning, going up the river. When the tide ebbed the barge commenced to break and commenced leaking amidships. We tried the pumps, we could not keep her free. She raised or hogged about a foot and a half amidships. This commenced when the tide left her about six or seven in the morning, and continued to get worse all the ebb tide. The tug came back about twelve o'clock on Saturday. When she came back the barge was broke. She had three or four feet of water astern and four or five feet forward. Her butts were started amidships. The tug came and took the captain and his wife ashore, then came back, jerked on the barge once or twice, but did not succeed
34 in starting her, and then left her. The tide ebbs and flows in her. At low tide there is no water in the stern cabin, and at high tide the cabin is full. On Wednesday last they took off the deck load; the rest is still in her, and they took a few dry oats out of the hold that the tide could not reach. Since she went ashore I have been by her most of the time. Her position now is, I think, the same as when she ran aground. I have seen steamers with tows pass up the river; they passed up with laden boats mostly at flood tide. They pass from 75 to 80 yards on the Jersey side. Our captain had not been a great deal on the river Delaware. I have been on it all that he has. I have been up or down it five or six times. The pilot of the tug had charge of the course of the vessel the night she ran aground. I have been up and down the river in the L. Newman. The heaviest load I have known her to carry was 230 tons. She has had at times 7,000 bushels of wheat; at another, 9,000 bushels of corn. Once she carried 10,500 bushels of oats, besides a deck freight of beef and pork. I think her cargo the time
35 she was lost was about 200 tons. The boat was in good condition when she started. She was worth $4,000 from the price I have seen other boats sold.

Cross-examined.

I have been a boatman on the canal for twenty years; I have been master of a boat. I have no interest in the barge L. Newman; I have been employed on her two years steady. I have been receiving wages; now I am getting a dollar a day. The Newman was built about two years ago last summer, at Ithica, New York, by Row & Gillett, boat builders at that place. Her registered tonnage is, I think, 125 tons. Richard Sutliff, her owner, resides in Liverpool, Onondaigua county, New York. I suppose our captain hired the tug; I do not know. We took our load on board at Cattell's wharf; we finished loading between a half and quarters of an hour before being taken in tow. There were no agents of the barge here that I know of; the captain, I believe, procured our freight. We left Cattell's wharf between 6 and 7 o'clock. The tide at the time, I think,
36 was running down, ebb tide; the ebb tide was well down. The pilot calculated it would be ebb tide till about 8 o'clock. It was dark when went aground opposite Richmond. By a little cloudy I mean it was not a clear starlight night. It was a night you could make the bearings on shore. When we went aground at Richmond it was not the middle of the river, but rather towards the Jersey shore; we were heading up stream. Both the tug and barge went ashore opposite Richmond together. I cannot tell where the place is we grounded the second time; I could not tell between what points it was. I am not acquainted with the river as a general thing; as a general thing I have only been up it at night. I cannot tell how long it was after we grounded the first that we grounded the second time; we only touched and went off. There was another barge in tow of the steamtug at that time. She was on our starboard side. She was lashed on the right hand side of the tug the same as we were lashed to the port when we grounded above Florence. I don't know if the tug or the other barge grounded. I did not pay
37 any attention to them. After we loosed our lines the tug did not appear to be sticking; she had no difficulty in moving off with the other barge at the time the tug first pulled on us with our spring line. She, the barge, was aground, I think, all over. When I said her bow struck first, she must have slid on her whole length. Our tug pulled on our spring line down the river, quartering to the Jersey shore. About ten minutes or twenty minutes after she struck we examined her water line with a lantern. This was the first examination we made with a light. I think it was after the steam-tug had turned to take the other boat to Florence. I think it was ebb tide when we made the examination with the light. I think it was just the first of ebb. I told it was [it was] the first of ebb by observing the tide running some. We examined her both at the stern and bow. I cannot tell the speed at which we were moving when we struck on the bar above Florence. The blow was not a severe one; it was like striking on the soft bottom. We were heading at the time nearly up the river; we could see the land
38 and bearings. After passing Florence I cannot say what

course we kept; we must have kept pretty near the Jersey shore, of course. About three quarters of a mile above Florence we altered that course. Then we held crosswise from the Jersey shore till she ran on the bar. When the tug returned from Florence she did not lay hold of us again. When the tug returned the captain of the barge asked the captain of the tug how much we lost; he said six or seven inches. The tug's captain said he would come back on the morrow at the next high tide. Our captain asked what sort of bottom it was; he said it was soft. I don't think anything else passed. Three or four hours after the tug passed us again, she did not lay hold of us again. We did not call then for them to come to me. It was after he had taken the other barge to Bordentown, and had returned from taking off the captain and his wife to Florence, and was going up again to Bordentown, that I hailed him (the tug) to come to me. I told him it kind to seem to me that the barge had swung a
39 little, and if he would try and get her off and take her to Florence wharf, it would be better. The pilot of the tug came on board of us. It was then, I should think, full high water. He looked down the cabin. This was about 12 o'clock in the day time. It was the after cabin he looked into. He lay hold of us again by the stern with a spring line. He pulled her the same way down the river, quartering to the Jersey shore, but did not succeed in getting her off. No other tug made efforts, nor did this tug make afterwards efforts to pull us off. There was a tug hailed me on Monday morning before daylight, between three and four o'clock; I mean the Monday following the accident. He wanted to know if he could jerk me off. I told him I thought not, as she was broken in two and full of water, and he kept on his way up the river, or, I think, down the river. I last saw our barge this morning. I have been on board most of the time since the accident, taking care of her for the Insurance Company.

40 Adjourned to April 5th, 1865, at 11 a. m.

APRIL 5TH, 1865.

Present, Mr. M. P. Henry for the libellant, and R. P. Kane for the respondent.

Cross-examination continued.

I have remained with the barge ever since the time of the accident, with the exception of the time I have been under examination here. I have been in the employment, first, of the Insurance Company, and afterwards of the party who bought the oats. I don't know the name of the party who bought the oats, but I know the name of the party who is acting for him. His name is Maguire; he resides in New York. Mr. Maguire has superintended the taking out of the oats. He first began to remove oats from the barge the Wednesday after the accident; he had ten men employed, a tug and a barge. The tug was for the purpose of towing up the barge.

They first removed the oats that were in the bin, and then
41 took those that were on top, but under deck; the oats they took away were in good condition. They probably got a lair of dry oats, a foot and a half thick, out of the stern; none out of the bow; the bow has been steadily settling ever since the accident. I think it is occasioned by the tides washing the sand out from under the bow. On Thursday morning, at eight o'clock, they got through taking out the dry oats; this was the morning after they commenced; yesterday, at three o'clock, they went to work again. Yesterday was the 4th instant; they got out yesterday about one thousand bushels, and are at work discharging yet. I do not know how many bushels of dry oats they got out, but I suppose in the neighborhood of three thousand bushels. I believe they have ten men at work now. The oats they are taking out now are wet; they expect to get through unloading to-morrow.

MELVIN HILL.

Sworn to and subscribed before me this 5th day of April, A. D. 1865.

AUBREY H. SMITH,
U. S. Commissioner.

42 APRIL 4TH, 1865.

Present, Mr. W. P. Henry for the libellant, R. P. Kane for the respondent.

Richard Sutliff, the libellant, being duly sworn, says:

I am both owner and master of the barge L. Newman. There is no other owner beside myself. The barge was a lake boat of 125, custom-house measurement; her carrying capacity was about 220 gross tons. I was master of the boat on her last voyage when she was lost. Her cargo was of oats. A paper is produced, which is shown to the witness, and marked by the commissioner (A. H. S., 1.) The witness says, this is the bill of lading signed by myself; the cargo was taken on board at Cattell's wharf, between Market and Arch streets. We left Cattell's wharf on Friday, about dusk, in tow of the Admiral Farragut, bound for New York. The Farragut was to take us to Bordentown. The Farragut came down and asked
me if I wanted a tow. I told him I did. I was towed
43 on the left hand side of the Farragut, going up. We were attached by a bow line astern and a spring line. After leaving Cattell's wharf, we went up just above Florence, three-quarters of a mile I should judge. There they run me aground, above Florence, on the Philadelphia shore. It was about 3 o'clock on Saturday morning; I think it was about the 25th of March. The Admiral Farragut had direction of the tow at the time we went aground. There was another lake boat in tow; she was on the right hand side. After our boat ran on there, they backed on her once or twice, but did not get her off. Then the pilot in the pilot house tells my men to throw the bow line off; then they backed up and pulled once or twice on the spring line, pulling

astern of her; then he sings out to me to loosen up the spring line, and he throws my line off his tug, and says he will come back the next day at high tide and pull me off. As he was going away I asked him how the bottom was. He said it was good, and said it would not hurt me at all. He then went back to the Florence dock, and remained there, I think, all night. In the morning he proceeded up the river to Bordentow; the same day he came back about high water. I should judge, about
44 12 or 1 o'clock. My vessel was then broke right down; she had broken on the low tide. The tide left her and she hogged right down. When the tide came in she filled. When they came they landed me and my woman ashore. I then came down to Philadelphia, arriving there about 5 or 6 o'clock in the evening, and reported to the consignee. They telegraphed to the insurer. The boat lays now right where she did. She commenced breaking on Saturday morning about daylight, between six and seven o'clock, or about there. She bent right over in two places, bow and stern. The bow is a good deal worse than the stern. Her back humped up she lays there, and every tide, I think, her bow works a little more into the sand; her stern, I think, remains the same. Her deck load has been taken off, and they have gone up to-day to take the rest of the load off. The cargo has been sold by the Phœnix Insurance Company of New York for three thousand dollars. When we ran aground, I think the tide had just commenced to fall. The night was a little cloudy when we ran ashore. We could see the shore quite plainly. We were going probably two or three miles an
45 hour; I cannot say certainly, but I don't think more than two; I judge by the time we started. In going up the river, we ran aground near Richmond. We were aground there, probably, from twenty minutes to half an hour. We touched once after that, but we did not stop. Our boat drew then about 5 feet six inches, laden as she was, on an even keel, about. We had a cargo of 12,700 bushels of oats. This was not the full carrying capacity of our boat. Her full carrying capacity is 15,000 bushels of oats. The boat was two years old last December; she had run two summers; she was built at Ithaca, New York. Her value at the time she was lost was $4,000. I was offered $3,800, cash in hand, by a sutler before I left Cattell's wharf. I have been offered between $3,600 and $3,700 several times. I purchased her for $3,200, I think, from Roe & Gillett of Ithica, and have paid for her, all but about $500.

In the winter of 1864 I made one trip from here to Washington—I mean the winter of 1864 and 1865. She laid up in December, 1864, in Camden, and remained there till February; I think the last of February, 1865. I went to Alexandria and was gone thirteen days before this trip. In the winter of 1863–64, I made one
46 trip to Washington and got froze up in Chesapeake City, and lay there about three week. Then I went to Baltimore, first having gone to Washington, and remained at Baltimore about three weeks. I saw the Camden go up the river with a tow, the morning of Saturday before the tow took me ashore. She passed us on the

Jersey shore side; she passed, I should judge, about 100 yards from me towards the Jersey side. I have seen a number of fellows with tows since that time, with laden boats. They passed us about the same distance on the same side. I had received $275, advanced freight. The usual expenses of towage, &c., on a voyage to New York are about $200; the usual time for a trip to New York is from five to six days. My man's wages were a dollar a day; the expenses of provisions for the boat were from two-and-a-half to three dollars a day.

Cross-examined.

The name of my consignees here was Joseph O'Brien, to whom I reported in Philadelphia. He keeps a flour and feed store out Broad street. I told him she was sunk. It was near dusk of Saturday evening. I was on the stern of my vessel when my vessel struck above Florence; my man was on the bow. When she struck she was heading up the river; she was quartering to the
47 Pennsylvania shore. I could distinguish objects on both shores. I should think the tug got aground at the same time, because I should think she drew more water than we did; this was all the reason I have for thinking the tug ran aground. I think the pilot did not know his business. The tug had no difficulty separating from us; she backed up and went right off. It was ebb tide when we ran aground. It was not much ebb, how far gone I cannot say. It fell from four to five feet after we got on. It could not have been a great way from high water. In trying to get us off the tug did not part the spring line. In pulling at the stern the tug pulled right off from our stern quartering to the Jersey shore. I think the bow struck first; of course it must have struck first. The shock was not a heavy one. It was going on a sandy bottom, I called it. I should suppose from the way she broke, that she must have run half way on the bar. I should judge she was going two miles an hour. After she ran on I examined her water line with a lantern. It was after the tug left her, maybe a half an hour or an hour after the tug had gone with the other boat down to Florence. The tide was
48 then running down. I held the lantern only over the stern to examine the vessel. She lay very well till the tide left her. As it left her she commenced breaking down. When the tug returned from Bordentown, she took me and my woman ashore. It was about twelve o'clock at noon, I think; it was not quite high water. She did not lay hold of me at that time. They didn't come on board the barge. He ran the tug close up to it. I told him the condition in which my vessel was; I told him that she was filled with water. He could see that she was filled, of course, himself.

The bin on the deck of the barge was put almost all the way round the vessel, within four or five feet from the forward and after cabins. It was constructed of boards strengthened by ropes passing through at intervals; the sides of the bin were some three feet and a-half above the deck. I can't tell how many bushels were in the bin; Mr.

O'Brien told me he thought there were between 2,700 and 3,000 in the bin. Joseph O'Brien loaded the barge; the man who stowed the oats was a man I hired. I do not remember his name. I don't know where he is to be found or where his place of business is. I did not pay or take a written receipt. I had been probably loaded
49 one hour or two before the tug took hold of us. I have seen Mr. Albertson, who is here present, a number of times. I think I met him on Sunday morning after the accident, down here on the dock.

Question. Will you tell us what passed between you at that meeting?

Answer. I saw him and he asked me if I had heard anything from the Insurance Company? I told him no, I had not yet. We were there only a few minutes, and then he went away. He said if he could get word from the Insurance Company, he would take a boat up there on Sunday.

Question. Did anything else pass between you at that interview?

Answer. I don't know that there was anything else in particular.

Question. Who were present beside yourself at that time?

Answer. I think Mr. Wood, who is now present, was with me at the time. I do not recollect of any one else being present.

50 Question. Did not Mr. Albertson inform you that he had his tug boat and a barge in readiness, and that he had hands already employed, and that he was desirous of going to your barge and unloading her, and getting her afloat, and did you not decline acceding to his request on the ground that you did not wish to do anything which might meet with the disapproval of the underwriters on the cargo?

Answer. He told me in this way: I told him that I was to have a letter sent down to me to the Arch Street House. Then it was interesting to the Insurance Company, and he said he wished I would get word and see what the Insurance Company says about it. He say she wished he could hear from the Insurance Company so as to know what to do. If he could hear from them, he would take a boat and go right up there. That is all I think of now.

Question repeated.

Answer. I did not decline of his going to the barge. This was about all. I did not see him but a few minutes, we were
51 travelling around, we were busy.

Question. Have you anything further to say in answer to this question?

Answer. I don't know anything more than somebody spoke about scoops and shovels. I could not tell what day the unloading of the cargo commenced. I think it was on Tuesday or Wednesday. Mr. Maguire said that he had the boss charge of unloading it. I did not see him on the barge. I have not seen anybody at work unloading her. I had been out the barge only once since she was sunk; that was on Sunday last, the day before yesterday. Nobody was at work on her then, her deck load was off of her. Not a great deal was taken out of her hold, 200 or 300 bushels, may be more. When I

was on her last, on Saturday last, it was pretty near low water, she was all broke to pieces as you may say, all smashed up, good for nothing. I saw some oats is bags down at the hay shed, which had been taken out of her, on yesterday. I did not examine their condition. I could not tell in whose custody they were. I believe that the oats on the barge had been sold since she went
52 aground. I was told so by the agent of the Insurance Company. I received no notice of that sale before it was made. I understood it was the sale of the cargo that was in the barge, just as she lay. I don't know if it was a public or private sale. It must have been public, for everybody knew about it.

Question. Whom do you mean by everybody?

Answer. I heard a number of men talking about it in McFadden and Thompson's office. They are men who do shipping for the government; No. 324 North Delaware avenue is their office; they did not get the Farragut to take me in tow that I know of. I never left my word that I know of. I did my own business in Philadelphia. I had no agent. I got my own loads and hired the tugs myself.

Re-examined:

I have been up in sight of the barge three or four times since she struck, but I have only been on board once. The Insurance Company left my man in charge of the boat; since the oats were sold Mr. Maguire pays him; Mr. Maguire is a shipping merchant in New York; I don't think Maguire bought the oats; I don't know who did.

53 Re-cross-examined:

I don't think I ever saw Mr. Albertson that I recollect of before that Sunday morning.

R. SUTLIFF.

Sworn to and subscribed before me this 4th day of April, A. D. 1865.

AUBREY H. SMITH,
U. S. Commissioner.

54 APRIL 18TH, 1865.

Present, Mr. W. P. Henry for the libellant, R. P. Kane for the respondent.

Jonathan Howell, a witness produced on behalf of the libellant, being duly sworn, saith: I am master of the sloop Wave, trading between Philadelphia and Bordentown. I have been engaged in this trade since the 22nd of February, 1864. I have been making two trips a week, each way. I had been previously acquainted with the channel between here and Bordentown. I have beent rading as far as Kingcora which is above where the barge lays. I have not sounded to find how far she lays from the channel; as near as I can tell, she lies within thirty yards from the channel. I think I have ran within thirty yards from her with my sloop. I cannot an-

swer how broad the channel is at that point. I have not made soundings. I have been on board the barge. I was on board of her, I think, last Thursday week, she was then full of water; her bow sunk down a great deal further than her stern. Her hull is pretty well burst upon deck. I know the point where she is ashore. It is the upper end of Carman's bar; I think that is the name of it. The channel runs on the Jersey side of her. The depth of water is
55 thirty feet at half tide in the channel; where she lays is a loose sandy bottom. I have seen two boats pass that point often with tows; they generally run right up the middle of the channel about seventy-five yards from where she lays.

Crass-examined.

I am in the employ of Captain Mershon; the sloop Wave is in his name; he was captain of her when he got her; Captain Sleeper was her previous captain; he ran her for twenty years; Carman's bar runs from the Pennsylvania side of the river. It is on the upper end of that bar that she lies; there is no bar opposite Carman's bar setting out from the Jersey shore; there is a ridge coming down from the lower part of Newbold's island, which connects with Carman's bar. It connects a little above where the barge lies. Boats passing up the river have to pass over the ridge above where she lays. The depth of water over the ridge at half tide is about seven feet. The vessels pass over this ridge in order to get out of the Pennsylvania into the Jersey channel. Our usual heading over this ridge at night is for a clump of trees above on the Pennsylvania shore. The ridge or crossing place is about four hundred yards above where the boat lays.

JONATHAN HOWELL.

Sworn to and subscribed before me this 18th day of April, A. D. 1865.

AUBREY H. SMITH,
U. S. Commissioner.

56 In the Dis. Court of the United States for the eastern district of Pennsylvania.

RICHARD SUTLIFF
vs.
THE STEAM-TUG ADMIRAL FARRAGUT. } In admiralty.

Depositions of witnesses on behalf of the libellants in the above case, taken before Aubrey H. Smith, commissioner of the United States for the eastern district of Pennsylvania, at his office No. 137 south 5th street, in the city of Philadelphia.

APRIL 29TH, 1865.

Present, Mr. W. P. Henry for the libellant, R. P. Kane for the respondents.

Benjamin F. Day, a witness produced on behalf of the libellant, being duly sworn, says: I am a ship carpenter, of the firm of Day, Carpenter & Day, of Camden, New Jersey. I went to examine the bage L. Newman, at the request of Richard Sutliff. I found her on the Jersey shore just above Florence. This report, as far as I could see for the water, is the condition of the vessel. Paper
57 attached, and is marked by the commissioner, (A. H. S, 5.) From what I could see I should judge that the vessel would not bring over three hundred dollars as she lay there. If the tide would leave her so that the leaks could be stopped she could be brought to the city at trifling expense, otherwise it might cost $200, if you had to put barrels in her and lift her with chains. The tide ebbs and flows in her; she looks like a good built boat. I should judge as boats were worth last year she was worth $4,000.

Cross-examined.

She is what is called a lake boat; she has a keel of about 3-inch plank; sides are straight up and down, and flat bottom; she is almost like a box; short bilge; is what we call a regular canal boat. I was not able to see if she had any knees. The only timbers I saw were floor timbers running across about nine inches by four.

BENJAMIN F. DAY.

Sworn and subscribed before me this 29th day of April, A. D. 1865.

AUBREY H. SMITH,
U. S. Com.

58 Eleazer Crowell, a witness on behalf of the libellant, being duly sworn according to law, doth depose and say: I was the master of the canal boat Dick Dean, which was in tow of the Admiral Farragut on the night the L. Newman went ashore. I don't know the name of the place she went ashore. I was bound for New York; the Admiral Farragut was towing us. I was on the starboard side, the Newman on the port side of the Farragut. The Newman went ashore, as near as I can judge, about one or two o'clock in the night time. My boat did not ground; my boat drew four feet and a half; my cargo was oats in the hold, none on deck. After the Newman ran aground the tug tried to get her off; she attached her hawser to the barge's stern; he could not work, the tide was so strong, and he took me to Florence and went back to the boat again; next morning he took me up to Bordentown. I saw the Newman then. I should not judge there was more than a foot of water under her by her looks—I mean she did not lie in more than a foot of water at that time. I passed about 100 yards from her as near as I
59 can guess. I cannot recollect or describe the course the vessels steered. I am not acquainted with the channel. The

next morning, when we went by her, we crossed over slanting from one side of the river to the other, about a quarter of a mile above. I was at the time in the tow of the Farragut.

Cross-examined.

I had no anchor on board my barge that night. I remember the captain of the tug asking me if I had an anchor. He wished me to anchor because the tide was so strong. He could not handle me and the other boat, so having no anchor he took me down to Florence.

ELEAZER CROWELL.

Sworn to and subscribed before me this 29th day of April, A. D. 1865.

AUBREY H. SMITH,
U. S. Com.

60 GENTLEMEN: We, the undersign, master shipwright, having examined the barge L. Newman, lying on the shore at Florrence Heights, New Jersey, and find her badly strained and broken; counted nine floor timbers broken, all that I could see on account of the water being over them; also two hatch beams broken, and hatch comings, and head ledges badly split and bulged up, also the butts in her deck, and sides strained apart, and in her present condition consider her worth about three hundred dollars.

Y'rs respectfully,

DAY, CARTER & DAY,
Master Ship Builders.

61 In the District Court of the United States for east. dist. of Pa.

Exhibit A. H. S. 5.

RICHARD SUTLIFF *et al.*
vs.
THE STEAM-TUG ADMIRAL FARRAGUT. } In admiralty.

Deposition of witnesses on behalf of respondent read, filed on the 8th day of June, 1866.

Deposition of witnesses on behalf of the respondent in the above case, taken before Aubrey H. Smith, commissioner of the United States for the eastern district of Pennsylvania, at his office, No. 137 South Fifth street, in the city of Philadelphia.

APRIL 6TH, 1865.

Present, Mr. R. C. McMurtrie for libellant, R. P. Kane for respondent.

Charles Dougherty, a witness procured on behalf of the respondent, being duly sworn, says: I follow the water as a business. I am a pilot on a steam-tug. I have been following the water about twelve

years. I have been on a pilot on the river Delaware about
62 three years; my piloting ground extends from Bordentown to Bomba Hook. Before that I was an engineer of a steam-tug for about three years. My whole twelve years have been on the river Delaware. I remember taking in tow a barge called the Newman on Friday evening, the 24th of March last. I took the Newman in tow a little before seven at Cattell's wharf. I received directions to take her in tow from Mr. Albertson, one of the owners of the tug. At the time we took her in tow it was strong ebb tide. After taking her in tow we went the steamship wharf above Callowhill street and took in tow another barge. The Newman was lashed to our port side by the bow line, a stern line and in a spring line in the usual way, and the other barge was lashed to our starboard side in the same manner. We were bound to Bordentown. We left the steamship wharf a little before eight o'clock. When we started the tide was setting down a little, yet it was nearly low water. I had some conversation with Captain Sutliff at the wharf before taking his barge in tow; he asked me how soon I was going to start, I said about low water. He asked me if he should have time to go down along the wharf, I dont remember where. I said I wanted to get off at low water, because I wanted to save all the tide I could. He said he was as anxious to get off as I was. It was a pretty dark even-
63 ing; it would light up once in a while; we touched the bottom at five mile point, or Point No Point as some call it, we went aground again the next reach above Florence. These were the occasions on which we were aground on that trip. We did not go aground opposite Richmond; there is deep water there from one shore to the other; we drew, I judge about six feet nine or ten inches. We did not stop at all opposite Five Mile Point, we only touched bottom.

We sounded off a little, then went back and then went ahead again; we were not detained more than three or four minutes, if that, by this grounding. I know Florence reach; I kept on near the left hand shore, and when I got to Florence reach I headed for a clump of trees on the bend of the river on the Pennsylvania shore. I kept that course till I opened the land above Florence foundry wharf, then I hauled around into Florence reach and kept the land to my right about one hundred yards, then I steered so till I got opposite a little white bath house at the upper end of the reach—that is the mark we have for beginning to haul around; then we hauled around a little, heading for the barn on Newbold's island. I kept the barn until we got aground. We went aground three or four hun-
64 dred yards above the little white house we turned off at. We grounded on the upper end of the flats above Florence on the Pennsylvania side. The boat on our port side grounded, the Newman, neither the tug nor the other barge went aground. I did not feel any shock. The steward was sounding at the time; the steward acts as deck hand; he was sounding with a pole by my direction; I called him out and told him to sound. The boat when I called him out was about opposite the little white house; it is close down to the water's edge on the Jersey side. When he first began sounding he

did not touch bottom; after he had tried three or four times he sung out about two fathoms; the next time he sounded he said it was shoaling; before he had time to sound again I saw the boat's head play round to the Pennsylvania shore; it was occasioned by the boat on the port side grounding; then I stopped and went back, I mean backed; I did this several times; after that I let go of the bow and stern lines attached to the Newman, and took the spring line and put it in the chock on our stern, the other end being attached to his stern; then we went ahead and tried to pull him off. We pulled to the Jersey shore at first, heading a little up stream, then I found the
65 current so strong that it cut our head around; it swept our head right down the river and under his stern. The other barge was alongside of us on the starboard side all the time; we got the to line around the chock and tried it again. In making these attempts pull her off, I did not go aground myself. Finding I could not manage the tug with the floating barge alongside, I asked him to anchor; then he told me, that is the captain of the floating barge told me he had no anchor; then I was compelled to take him down to Florence wharf, so that I could work the boat to better advantage in pulling off. I went to Florence, left the barge there, and came back and pulled on him again without success. After I had pulled on him for a while I asked him how much he was out; he said he was out eight inches; that is, his boat would require eight inches to make her float. It was then half-past three on Saturday morning; it ought to have been high tide at Philadelphia at one o'clock. There is two hours' later tide at Florence than at Philadelphia. I asked him if there was any use in pulling any more on him, and he said he did'nt believe there was, she was out too much to come off. I know it was half-past three o'clock, because when he was looking to see how much she
66 was out, I looked at the clock. This clock was in the forward cabin; we had two clocks, one was in the forward cabin, the other was in the after cabin or cook house. Then I went back to Florence and made fast till daylight, and then went up to Bordentown with the other barge; we next went to the barge at eleven, or a little after, on the same day. The captain said she had gone down; I asked him if he had water in her; he said he had about four feet of water in her; I asked if there was any use of pulling on him; he said no, and asked me to take him ashore; I took him ashore, with the woman that was on board. As I was going back towards Bordentown, near about twelve o'clock the same day, a man on the barge hailed me and told me she was all afloat, and I thought, as she had four feet of water in her, she could'nt be; so I went aboard, looked down her after cabin, and could'nt see any water in her, and I thought then she might be afloat, and I asked him to let us have his line to try and pull him off and we pulled on him two or three till he told us it was no use she would not come off. We then let go of the line, went up to our barges, and fetched them down to Philadelphia. Our barges were at Robins' wharf, this side of Bordentown; when we
67 came to her I did'nt take notice that she was bent till he told me, and then I saw she was bent a little—by bent I mean

hogged. I last saw the barge last Sunday about low water; I went up to her in my tug; there were several shipwrights aboard, Mr. Albertson's two brothers were. The barge then was then bent pretty bad, but there was nothing broke about her. The butts were all good, and the seams. There are flats on the Jersey as well as the Pennsylvania side, to two feet in the vicinity of where the barge lies; she lies towards the lower point of the Pennsylvania flats. The Jersey flats run down from Kingcora wharf pretty near the little white house. The channel lies between the two flats; it is from one hundred and fifty to two hundred yards wide, there is ordinarily at the shoalest parts of the Pennsylvania flats at high water; from two and a-half to three feet of water. When I was there on Saturday, near about twelve o'clock, the tide was about three hours of high water before high water; that was the next flood after this grounding; there was about two feet and a-half of water on the flats then; the current at the time the barge went ashore, to which I have referred, was setting towards Florence foundry wharf. Florence foundry wharf is at the lower end of the reach; when I was there on Saturday I noticed the
68 current was setting down a little in the same direction. I remember hiring a barge and men the Sunday following the accident; Mr. Albertson told me to get the men while he went and saw some other parties; the barge and men were to go up and unload the boat. On Saturday we had the fires going, and steam up all that night, and all day Sunday till eight o'clock in the evening.

Cross-examined.

I have had charge of the "Farragut" two months and a-half. I was licensed the 28th day of March, 1865. Witness produced a paper marked A. H. S., 2, which is inspector's certificate that deponent is licensed as a second-class pilot from Bordentown to Bomba Hook. I have been in the habit of piloting to Bordentown for the last three years. When I passed the white house I was about one hundred yards from it, when she ran aground; the water was about eight or nine feet from the tug from the side of the barge not aground; it was more from the side of the barge that was aground, it was five feet. At De Haven's turn the depths is about eleven feet. It is a sandy bottom. The sounding pole will go in three or
69 four inches. I had charge of the Theodore Byerly before taking charge of this boat. She belonged to John Byerly and Thomas Rowan.

C. DOUGHERTY.

Sworn to and subscribed before me this sixth day of April, 1865.
AUBREY H. SMITH,
U. S. Commissioner.

APRIL 8TH, 1865.

Present, Mr. M. P. Henry for libellant, R. P. Kane for respondent.

William Pender, a witness produced on behalf of the respondent, being duly sworn, says:

I was steward of the Admiral Farragut at the time of the accident to the barge Newman. I served also as deck hand, in addition to my duties as steward I recollect taking the barge Newman in tow on the evening of the 24th of March last. After taking her in tow we proceeded up to the steamship wharf and took another barge in tow. We had the Newman lashed to our port, and the other barge to our starboard side. We then proceeded up the river. We went or got the barge Newman aground about half-past twelve that night above Florence. I don't recollect any other unusual occurrance during that trip; we went aground nowhere else. We dragged on Five-mile point; the barge as well as the tug. As soon as we discovered we were dragging we started back, and that swung us
70 around so that we kept right on. We were not detained more than two minutes at the outside. I recollect no other grounding, except at Florence. We did not ground off Richmond. I was on deck when we grounded above Florence. I was making soundings at the time, by orders of Captain Dougherty. Just as we began to alter our course, setting off from the little white bath house, just above Florence hotel, we altered our course towards the Pennsylvania shore. I sounded with a long pole. I sounded some considerable time without finding bottom. The first sounding that I found bottom was two fathoms; the next it was shoaling. I called out the soundings as I made them. Before I could shove down the third time, we brought up. Only the barge on our left-hand side grounded; neither the tug nor the barge on our starboard side struck. After we grounded we made some revolutions backwards and forwards to pull her off. We did not succeed in pulling her off. We then loosed our bow and stern line, and attached her spring line to our after chock, and towed at her stern, but did not get her off, because the captain of the barge said it was no use. On Saturday, the next day, we tried on her again. Between eleven and twelve o'clock we were going up the river again, after having taken the captain and his woman ashore; we were hailed by the man that was on the boat; he said they were afloat. We did our best to pull
71 him off, but did not succeed. I saw our captain go aboard the barge and into the cabin.

Cross-examined.

I sounded from our own boat, from the port side of the bow. We were going very slow and carefully. At the time she struck had altered her course a little towards the Pennsylvania shore. I am not well acquainted with the river, but I think there is a bend below where we struck. I went on the Farragut the 28th day of December,

1864. I think that was the first trip I made up in the Farragut to Bordentown. The most towing the Farragut had done, while I was on her, was down the river. I have followed the water next June will be 13 years. I have been up the river five or six times.

W. H. PENDER.

Sworn to and subscribed before me this 8th day of April, 1865.

AUBREY H. SMITH,
U. S. Commissioner.

NOV'R 27TH, 1865.

Present, Morton P. Henry, esq. for libellant, Robert P. Kane, esq. for respondent.

James P. Stetson, a witness produced on behalf of the respondent, being duly sworn, says:

72 My business is that of pilot of a steam-tug. I have been at that business 13 years. I have been a master all that time. I followed the water before that. I command the steam-tug William Cramp at present. She is owned by myself and other parties. After we leave Bristol we keep the Pennsylvania shore, until we near what is called Florence reach. We then near the Jersey shore, say one hundred yards, or near that, from shore, till we get to a bend in the river; then we come around gradually till we head for a barn on Newbold's island; then we cross the bar and near the Pennsylvania shore; by near I mean approach the Pennsylvania shore. This bar sets off from the lower end of Newbold's island, and crosses the river downward. In going up the river we have to cross that shoal, passing or crossing from the channel on the New Jersey side to the channel on the Pennsylvania side. In crossing the shoal our heading is for the barn on Newbold's island; that gives us five to six feet crossing the shoal at low water. That is the best crossing at that shoal; that best water is one hundred feet wide, and on each side it shoals gradually. Freshets are frequent in the river Delaware in the spring and fall.

Question. From your experience as a tug-boat pilot, what is the effect of a freshet upon the water on the shoals of which you have spoken?

73 Answer. The freshet always raises the river higher than it would be at ordinary tides, and causes the current to run down on the flood tides.

There is a back channel behind Newbold's island, and at a high state of a freshet there is a current setting through it. That current sets rather across the river, towards the Penn'a shore.

The current will naturally sweep a vessel across the river, going up; I mean it will sweep her across the natural tide. I have always been on the river Delaware, plying backwards and forwards, since I have been in charge of a steam-tug. It is a common matter for steam-tugs with tows to ground on this shoal. I have crossed that shoal in company with Captain Dougherty, of the Farragut, within

two weeks after the accident; we went up with a tow of six barges, side by side, his tug and my tug ahead of the tow. This was about the middle of the afternoon. Captain Dougherty did the piloting; he steered his boat, and mine was alongside with a lashed helm. On that occasion he held the proper and usual course.

Cross-examined.

The channel opposite Florence heights, below the bar, is about two hundred yards wide. The channel commences to narrow just at Florence heights; the tail end of the bar commences there. I remember where the Newman went ashore; it was about half
74 way along Kingcora bar. The channel is very narrow where she went ashore, not much over one hundred feet. I should judge she went ashore something less than a quarter of a mile from the lower end of Newbold's island, as it appears at high water. The point where she grounded was less than a half a mile above Florence wharf.

Question. At what point ought the Farragut, with the Newman in tow, to have commenced crossing from the Jersey to the Pennsylvania shore?

Answer. She ought to have commenced crossing near the point where she went ashore.

Question. Is not the point where the Newman went ashore below the usual point of crossing the bar?

Answer. It is, or she would not have gone ashore; the current going down cut him out of his course, I suppose.

JAS. P. STETSON.

Sworn to and subscribed before me, this 27th day of November, 1865.

AUBREY H. SMITH,
U. S. Commissioner.

Samuel P. Porter, a witness produced on behalf of the respondent, being duly sworn, says:

I am captain of the steam-tug General Rosencranz. I have followed the water on the river Delaware for twenty years. I have been master and pilot of a steam-tug for two years. I have been
75 familiar with the river as far as Bordentown for fifteen years. I have read the deposition of Captain James P. Stetson, which has just been taken in this case, and the statements contained therein respecting the proper courses of steam-tugs, and their laws, and the navigation of the river, and the effects of freshets on the river at Kingcora bar, are in my opinion correct, with one exception, and that is, that I do not think the width of channel at the point most favorable for crossing the bar is so much as one hundred feet. I think it about seventy-five feet.

Cross-examination.

I saw the barge L. Newman after she went aground.

Question. The point where she went ashore was below the proper point where she ought to have crossed; was it not?

Answer. Yes.

Question. Can you give any approximation of the distance below?

Answer. It was not over one hundred yards below the usual crossing place. I have crossed over the very spot where she went ashore over one thousand times, at high water, and drawing seven feet of water.

Re-examined.

76 I remember the freshet in the river at the time the Newman went aground. The effect of it was that we had no flood tide above Bristol; I mean by that, the effect of the current was to kill the tide as far down as Bristol. It is a common thing for boats to ground there; the shape has altered within a year; the sand has heaped up.

S. P. PORTER.

Sworn to and subscribed before me this 27th day of November, A. D. 1865.

AUBREY H. SMITH,
U. S. Commissioner.

George Hoover, a witness produced on behalf of the respondent, being duly sworn, says:

I am master and part owner of the steam-tug John K. Hammitt. I have followed the water twenty years, and the tug-boat business nine years, exclusively on the river Delaware. I have read the depositions of Captains Stetson and Porter, which have been taken in this case, and the statements contained therein respecting the proper courses of steam-tugs and their tows, and the navigation of the river, and the effect of freshets on the river at Kingcora bar are in my opinion correct. To the best of my judgment the width of the channel at the point most favorable to crossing is about one hundred feet. I have known Captain Dougherty, late of the Farragut, about nine years. I have had opportunities during that time of judging
77 of his capabilities as a pilot and a waterman. My opinion is that he is a capable man; and that is his general reputation.

GEORGE HOOVER.

Sworn to and subscribed before me this 27th day November, A. D. 1865.

AUBREY H. SMITH,
U. S. Commissioner.

JAN'Y 19TH, 1866.

Present, M. P. Henry, esq., for libellant, Rob't P. Hane, esq., respondent.

The witness for the respondent not appearing, examination continued to Monday, January 22nd, 1866, at 12 m.

JAN'Y 22ND, 1866.

Present: M. P. Henry, esqr., for libellant.

The witness for the respondent not appearing, examination continued to Thursday, January 25th, 1866, at 12 m.

JANUARY 25, 1866, 12 m.

The witness for the respondent not appearing, their further examination is postponed to a day to be fixed hereafter.

78 In the District Court of the United States for the eastern district of Pennsylvania.

RICHARD SUTTLIFF
vs.
STEAM TUG ADMIRAL FARRAGUT.

Depositions of witnesses on behalf of the respondant in the above case, taken before Aubrey H. Smith, esquire, commissioner of the United States for the eastern district of Pennsylvania, at his office, No. 137 South Fifth street, in the city of Philadelphia.

MAY 16TH, 1866.

Present, Mr. Henry for the libellant, Kane for the respondent.

James N. Thompson, a witness produced on behalf of the respondent, being duly sworn, saith: I am in the shipping and commission business. Our firm is McFadden and Thompson. I know the standing of the canal barge Newman, in the river Delaware. I first saw on the afternoon of the 26th March, 1865, it was about 3 o'clock of Sunday afternoon. I passed by her in one of our
79 tugs. Acting for the underwriters, we employed barges and men and took off the saleable grain and sold it on account of the parties in interest. The damaged grain we after took off and sent to New York by our line.

Mr. Albertson, one of the owners of the tug was in search of me on the evening of the 25th M'ch, the day after the sinking of the vessel. I did not see him until 7 o'clock next morning. I told, I did not know who loaded the grain, but I thought probably A. G. Cattell & Company. I walked up with him as far as Market street wharf and referred him to Mr. Joseph Green, who represented Cattell & Company. I then walked up as far as the steamship wharf, the second wharf below Callowhill, and then I found the steam-tug Farragut with steam up. I found Mr. Wood there, one of the owners of the Farragut waiting with a barge and a number of men

to proceed up the river and lighten the barge off. Mr. Wood must have had from eight to a dozen men. The name of the barge, which Mr. Wood had hired, was the Armstrong, of the capacity of about 220 tons, a barge similar to the L. Newman; this was about 8 o'clock in the morning. I have seen the L. Newman since she has been raised; she is running in our line; she now goes by the name
80 of the Walbridge; she carries cargoes of wheat and corn, and we consider her a first class barge; she insures as low as any other.

Cross-examined.

By Mr. Henry:

She was purchased by our agents in New York, Mr. Mahon & Company. They own her; they raised her and took her to the Jersey shore. They libelled her for salvage, and bought her at the marshall's sale. I do not know what she brought at the sale.

Re-examined.

By Mr. Kane:

I saw the Newman first about 3 o'clock in the afternoon. I think we could have taken up barge, and got out of her the principal part of the cargo. She had on in the neighborhood of 16,000 bushels. When we were up there the tide was pretty well down; we went on to Bordentown, and when we came down the tide was well up; she seemed to be by the bend; her head was down; she was a little hogged. I have seen other boats, equally badly hogged, come strait again after they were taken off.

JAS H. THOMPSON.

Sworn to and subscribed before me this 16th day of May, A. D. 1866.

AUBREY H. SMITH,
Commissioner.

81 Joseph B. Green, a witness produced on behalf of the respondent, being duly sworn, saith:

I am a clerk in the employment of A. G. Cattell & Company. I remember the stranding of the barge L. Newman, at the close of March, 1865. Capt. Albertson, the captain of the tug which had her in charge going up the river, came to my house supposing the boat had been loaded by our firm. I told him that we had nothing whatever to do with her. He asked me to come with him on the river to see what I thought advisable to be done with her. I met him. I met him on Sunday morning, the 26th March, 1865, about 8 o'clock, at the steamer's wharf, above Vine street, and also the captain of the sunken barge. Mr. Albertson proposed to the captain to take a barge and go up the river and take off what oats was merchantable; he said nothing about raising the barge; he had a tug and lighter, and men and shovels to go to work. Mr. Albertson pro-

posed to take up his own tug, barge and men to lighten the sunken barge. The captain of the sunken barge demurred, and said he thought it would effect the insurance; his objection was that it might invalidate his insurance; he declined the offer. Mr. Albertson had ten or a dozen men, a barge about the capacity of the L. Newman, and would have been able in fifteen or eighteen hours after
82 he got their to him emptied the Newman of her cargo, if it was dry; if it was wet it would have probably taken them two days.

No cross-examination.

JOS. B. GREEN.

Sworn to and subscribed before me this 16th day of May, A. D. 1866.

AUBREY H. SMITH,
U. S. Commissioner.

Charles H. Cramp, a witness produced on behalf of the respondent, being duly affirmed, saith:

I am a ship-builder in this city. I remember the stranding of the L. Newman in the Delaware. I remember visiting her and holding a survey upon her. I think it was in the latter part of April, 1865. She was then lying on the Jersey shore, above Florence Heights. I made the examination in company with Mr. Harman Vaughan, ship-builder of this city, and Mr. Albertson, who accompanied us in his tug. She appeared to have been aground on a log or large stone in one bilge, about one-third of the way into the kilson. Several of the floor timbers were broken off; I think five of them. The kilson, in the immediate neighborhood of the injuries, was partially started up; the beam over that portion of the kelson was also broken off, and the hatch combings at that portion of the deck was
83 started; the butt of the thick bilge streak on the outside was started off, and of course a few of the seams of the plank in the neighborhood had started. She was partially hogged, but not more so than I have seen sound canal boats spring. They adapt themselves to an ordinary bottom. It is a common thing for a sound canal boat to be sprung as much as this one was when we saw her. We had every opportunity of examining her; she was high and dry on a sandy beach, and I walked round and round her. At that time we calculated it would cost between $400 and $500 to put her in good order. The prices of labor and materials were then at their height; the repairs would cost less at the present time.

Cross-examination declined.

CHAS. H. CRAMP.

Sworn to and subscribed before me this 16th day of May, A. D. 1866.

AUBREY H. SMITH,
U. S. Commissioner.

Harman Vaughan, of the city of Philadelphia, a witness produced on behalf of the respondent, being duly sworn, saith:

I am a ship-builder of this city, and have read the foregoing deposition of Mr. Charles H. Cramp, and concur in all that he has stated in relation to the L. Newman.

No cross-examination.

HARMAN VAUGHAN.

Sworn to and subscribed before me this 16th day of May, A. D. 1866.

AUBREY H. SMITH,
U. S. Commissioner.

84 And afterwards, on the 16th day of June, A. D. 1866, the opinion or order of court as to the appointment of assessors in cause, if asked for by respondent, is filed, and in the words following, to wit:

The court having considered this case upon the respective allegations and proofs, is of opinion that if the respondents ask for the appointment of an assessor or assessors, the case is a proper one for such appointment, and that the questions for the assessor or assessors would be:

1. Generally. Whether the tug was in any respect in fault, and if so, in what respect?

2. Specially. Whether, in view of the position of the tug and tows in the river, and of the time of night, the light, &c., there was any want of due care in the omission to take soundings from the in-shore barge?

3. Specially. Whether proper efforts with sufficient promptness were made after the grounding of the barge to get her off?

85 And afterwards, to wit, on the twenty-second day of June, A. D. 1866, this cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged and decreed that the libellants recover of the respondents and their stipulators the amount of their damages in this cause.

And it is further ordered that it be referred to John H. Young as commissioner to ascertain and report to the court the amount of damages due to the libellants in the premises.

Whereupon afterwards, to wit, on the seventeenth day of September, A. D. 1866, the said commissioner makes and files his report in the words following, to wit:

86 RICHARD SUTLIFF, OWNER AND MASTER of the barge L. Newman, *vs.* STEAM-TUG ADMIRAL FARRAGUT. } In admiralty.

To the Hon'ble John Cadwalader, judge of the District Court of the United States for the eastern district of Pennsylvania.

The undersigned, appointed commissioner to ascertain and report

the amount of damages which should be assessed against the respondents under a decree of court, entered June 22d, 1866, respectfully reports:

The libellant's barge, L. Newman, 125 56-95 tons measurement, built in 1862, was sunk in the Delaware river, near Florence Heights, on the 24th of March, 1865, while in charge of and in tow of the steam-tug Admiral Farragut; "she, the barge, was raised and sold under an order of the United States District Court for the district of New Jersey," dated 4th May, 1865, to satisfy a salvage claim filed in the said court by Henry J. Hewitt as salvor.

The proceeds of said sale after deducting costs, charges and expenses were awarded to the said Henry J. Hewitt in satisfaction of his salvage claim, thereby causing, so far as the interest of
87 the owner of the said barge "L. Newman" was concerned, a total loss to him.

The difficulties attending the valuation of vessel property without personal examination have been encountered in this case. The commissioner, however, availing himself of the best information attainable from the most reliable sources, experts and others, but depending, however, mostly on basis adopted by the United States government on valuing vessels employed during the war, with this data and information the commissioner estimates the value of the barge "L. Newman," at the time she was sunk, at two thousand seven hundred and seventy-five dollars, ($2,775). Entering into the amount of damages in this case is to be considered the loss of freight; the amount thereof, as per bill of lading, is seven hundred and sixty-two dollars, ($762,) on which an advance of two hundred and seventy-five dollars ($275) was made by the shipper of the cargo to the said master at Philadelphia.

The expenses which would have been incurred on the trip to New York would have been to wit: Towage to Bordentown, $15; canal tows, one cent per bushel, (of 30 lbs.) on oats, is $135 46; team towing, $25 19; towing from New Brunswick tow New York,
88 $35; discharging at New York, $25; victualling and manning, at $125 per month, for 4 days, is 16 64-100; making aggregate deductions as offset of $252 29-100, under the statement the account stands as follows:

Value of the barge L. Newman				$2,775 00
Freight on cargo			$762 00	
Deductions: towage to Bordentown		$15 00		
Do.	canal tolls on cargo	135 46		
Do.	team towing on canal	25 19		
Do.	towage from New Brunswick to New York	35 00		
Do.	discharging cargoes at New York	25 00		
Do.	victualling and manning	16 64		
			252 29	
				509 71
				$3,284 71

Interest from March 24th, 1865, to date of entry of final decree, month, days, at 60 p. c. per annum

Total amount of damage.....

From the above amount of $3,284 71–100 is to be deducted the $275 advance by the [by the] shipper of the cargo to the master of the barge, and which is to be refunded to the said shipper of the cargo or his representative.

Respectfully submitted:

Philad'a, July 16, 1866.

JOHN H. YOUNG,
Assessor.

89 The comm'r respectfully reports that he has notified the advocate and proctors of the respective parties of his intention to file the above report, and no exceptions to the same have been presented to him.

Sept. 14th, 1866.

JOHN H. YOUNG.

Whereupon afterwards, to wit, on September 18th, A. D. 1866, upon reading the report of the commissioner, it is ordered that the same be confirmed, and that the respondent pay to the libellants the sum therein mentioned, to wit, to the shipper of the cargo in the libel mentioned, or his representatives, the sum of two hundred and sevent-five dollars, with interest from March 24th, 1865, to the date of this decree, to wit, two hundred and ninety-nine dollars and forty-seven cents, ($299 47-100,) and to the libellant the residue of the sum mentioned in the report of the assessor, to wit, three thousand two hundred and seventy-seven dollars and fifty-six cents, ($3,277 56-100.)

90 And afterwards, to wit, on the twenty-sixth day of September, A. D. 1866, the said respondents pray leave to appeal from the decree aforesaid to the next Circuit Court of the United States for the eastern district of Pennsylvania, in the third circuit, and the same is allowed upon security being given.

UNITED STATES, *Eastern District of Pennsylvania, ss*:

I certify the foregoing to be a true and faithful copy of the record and proceedings of the District Court of the United States in and for the eastern district of Pennsylvania, in a certain plea civil and maritime therein lately depending, wherein Richard Sutliff, owner and master of the barge L. Newman, Gurnie and Buck, owners of the cargo of the said barge, and the Phœnix Insurance Company, of the city of New York, were the libellants, against The steam-tug Admiral Farragut and Isaac Albertson and George Wood, owners of the said steam-tug, respondents.

91 In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this

twenty-ninth day of September, A. D. 1866, and in the 91st year of the independence of the said United States.

[SEAL DIST. CT. U. S.] CHARLES S. LINCOLN,
Pro. Cl'k Dist. Ct. U. S.

92 And afterwards, to wit, on the twenty-fourth day of May, anno Domini one thousand eight hundred and sixty-seven, in the Circuit Court here, the cause having been argued by counsel, it was ordered, that a decree be entered in favor of libellants for the damages sustained by the said barge L. Newman, and that it be referred to John H. Young, as commissioner, to assess the damages by ascertaining the necessary cost of raising and repairing said boat, and the loss of freight and also the necessary loss of employment of the said barge during the time which would have been required to raise and repair said barge. And that he make report of the same when so ascertained.

93 And afterwards, towit, on the eleventh day of April, A. D. 1868, a commission directed to John L. Cadwalader, esquire, at New York city, is returned opened in open circuit and filed, which said commission being read is in the words and of the tenor following, to wit:

94 In the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1866.

RICHARD SUTLIFF, OWNER AND MASTER OF the barge L. Newman, and Gurnie & Brick, of the city of New York, owners of the cargo of said barge, and the Phœnix Insurance Company, of the city of New York, *vs.* THE STEAM-TUG ADMIRAL FARRAGUT.	No. 3.

The President of the United States to John L. Cadwalader, esq., at New York city:

Know ye, that in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, John L. Cadwalader, full power and authority, in pursuance of a rule lately made in the Circuit Court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain action in admiralty therein depending, wherein the said Richard Sutliff is plaintiff and the steam-tug Admiral Farragut is defendant, to call before you at a certain day and place, by you for that purpose to be appointed, all and every person and persons who may be named to you by the said libellants as witnesses in the said action, and then and there to examine them on their respective oath or affirmation, on certain interrogatories hereunto annexed, touching the premises, and to reduce their testimony to writing;

and when you shall have so done you are to send the same to the said Circuit Court, closed up, and under your seals, plainly and distinctly set, together with this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this twenty-fifth day of November, A. D. 1867, and in the 92nd year of the independence of the said United States.

[SEAL.]

W. GRIER HIBLER,
Pro Clerk of the Circuit Court.

C. C. U. S., in admiralty.

95 R. SUTLIFF
vs.
THE ADMIRAL FARRAGUT.

Interrogatories to be exhibited to witness to be examined under a commission to be issued on behalf of libellant to the city of New York:

First. Please to state your name, age, residence and occupation.

Second. Had you had any connection with the raising of the barge L. Newman, which was sunk in the river Delaware, opposite to Florence, in the spring of 1865? If aye, state what your connection was, how were you employed, and by whom.

Third. By whom was the said barge raised, and how long a time was occupied in raising the same; what means and appliances were used for raising the same; by whom were the expenses of raising the barge paid, and to whom; and what was the amount
96 paid for the raising of the said barge? Attach to your answer, if it is in your power to do so, the original or true copies of any receipts you may have for expenses paid in connection with the raising of the said barge.

Fourth. State, if you please, the value of the said barge when raised, and your means, if any, of knowledge on the subject.

Fifth. State, if you please, the value of the carge of oats laden on board said barge after being raised, and your means of knowledge on the subject.

Sixth. By whom was the said boat repaired after being raised; at whose yard, and where? When were the repairs first commenced upon said barge, and when were they finished? Who ordered the repairs? What was the amount expended on said barge for
97 repairs caused by said accident, including the shipwright, blacksmiths', painters' and others charges for said repairs? State, if you please, the particulars of each item so paid, setting forth the different character of the work done, and materials furnished in repairing said barge; to whom the same was paid, and when; and attach, if it is in your power to do so, the original or copies of any receipts for payments made for such repairs.

Seventh. Who superintended the raising and repairing of the said

barge? How soon after being raised did you see the said barge? What was her condition when raised? State whether or not the repairs made to the said barge, after being raised, were necessary or otherwise, to repair the damages sustained by her sinking in the Delaware, and to restore the said barge to a sound condition, or otherwise.

The libellant names as commissioner on his behalf John L.
98 Cadwalader, of the city of New York, councellor at law.

M. P. HENRY,
R. C. McMURTRIE,
For Libellants.

Endorsed as follows:

And now, October 22nd, 1867, it is ordered that a commission issue unto John L. Cadwalader at the city of New York, to take the testimony of witnesses to be read in evidence before the commissioner appointed to assess the damages in this cause upon 10 days' notice to the proctor for respondent.

Examination of witnesses by John L. Cadwalader, commissioner, at the city of New York, by virtue of the annexed commission, in an action pending in the Circuit Court for the eastern district of Pennsylvania, in which action Richard Sutliff, owner and master
99 of the barge L. Newman, and Gurnie & Brick, of the city of New York, owners, and the Phœnix Insurance Company, are plaintiffs, and the steam-tug Admiral Farragut defendant. The said witnesses having been produced before me at the city of New York, at my office, 45 William street, and being duly sworn and the interrogatories being carefully put to them, testified as follows.

JOHN L. CADWALADER,
Commissioner.

James T. Easton, being first duly sworn in the above-entitled matter to state the truth, the whole truth and nothing but the truth, deposes and says:

To the first interrogatory he saith: My name is James T. Easton; I reside in the city of Brooklyn, and county of Kings, in the State of New York; I am forty-seven years of age; I am a shipping
100 and commission merchant, and have been so for five years past; and do business at the city of New York, under the firm name of Easton and McMahon.

To the second interrogatory he saith: I had connection with the raising of the barge L. Newman. Our firm, Easton, McMahon and Company, were employed by H. J. Hewitt to take out the cargo of oats and to raise the barge. One of our partners has since died, and our firm is Easton & McMahon now. Mr. Hewitt had bought the cargo through us, and engaged us to go to Florence and raise the barge and cargo, and then to take the cargo out.

To the third interrogatory he saith: We raised the barge; I mean our firm did. We went up to Florence and it took us about twenty

days, as near as I can recollect, to do it. We took two canal boats from New York through the Delaware and Raritan canal, and then down the Delaware to where the barge was, near Florence.

JOHN L. CADWALADER,
Commissioner.

101 We took chains and hawsers and empty casks with us. The chains and hawsers from New York, on the canal boats, and we had the empty casks sent up from Philadelphia. These are the ordinary appliances to raise boats of that kind, when you can get no floating derrick, as we could not get there. We paid out the expenses of raising the barge for Mr. Hewitt. These expenses consisted of the expenses of the canal boats, and the appliances from New York, the labor of the men employed at Florence, the wages of a boat keeper there, the casks from Philadelphia, the board and incidental expenses and certain small items. This all amounted to thirteen hundred and fifty-97-100 dollars. (Paper shown by witness and attached hereto and marked exhibit A.) This paper is our bill sent to Mr.
102 Hewitt for that work; this is the amount that these expenses and the raising came to in all. When I say the bill, I do not mean the original bill, but a copy of it, made by our clerk. The original bill sent to him was here in our office, at the corner of Coenties Slip and Pearl street, and was burnt upon Christmas eve, with the rest of the papers there. This copy was made before that time, and is a correct statement of the amount paid us by Mr. Hewitt for that work in detail. Our books, with all our papers, were burned at that time. I had the receipts for every penny of this bill.

To the fourth interrogatory he saith: The barge when raised, as she lay at Florence before she was repaired, was worth about fifteen hundred dollars. I then examined her as she lay there, and for the purpose of ascertaining her value. I have had experience in
103 these matters all my life, and have examined a great many boats in the condition that she was in, and I formed my opinion from my experience and what I saw. I am accustomed to buy boats of that kind in that condition, and I would have paid that sum for her, and that I consider to have been her value.

JOHN L. CADWALADER, *Commissioner.*

To the fifth interrogatory he saith: There were about thirteen thousand bushels of oats in her when she sank. I know that from the bills of lading, and also because she was consigned to us.

When we raised her I examined her and made an examination to know what she had in her. I considered that of the whole amount about one thousand bushels had been washed out. The remainder was on board, and I estimated that there was about twelve
104 thousand bushels left. Of these we got out her deck load dry. This, I think, was about twenty-five hundred bushels, and all the remainder were pretty much used up by the water. They were converted into a pulp, and almost entirely used up. They were sour and hot.

We towed the barges to New Brunswick that we took there to

raise her with, and had on them the most of the damaged oats and some on another barge, and we brought to New York, in all, about nine thousand five hundred bushels so damaged, and sold them for about twenty cents a bushel, and they brought in all some nineteen hundred dollars. I cannot now say exactly how much the dry twenty-five hundred bushels brought, but they were in good condition, and would have brought the current price. They were taken to Philadelphia and sold. There were besides some wet on
105 deck, and these twenty-five hundred bushels were a part of the deck load.

I know the value of these damaged oats from my own experience. I am accustomed to deal in these things, and when they were sold I considered that they sold for all they were worth.

To the sixth interrogatory he saith: The boat was repaired by Runyon & Son, at New Brunswick. We took her to New Brunswick after she was sold at auction by the United States marshal, and left her at Runyon's yard, on the canal. The repairs were commenced and finished there by Runyon and Sons, and

JOHN L. CADWALDER,
Commissioner.

[and] persons employed by them. I cannot give the exact date when she was taken there, but it was within a few days after she was sold, and the repairs began immediately after. It took about four weeks to repair her. Our firm ordered the
106 repairs for Mr. Hewitt. The amount expended for these repairs was about eleven hundred dollars. They were all caused by the accident. These bills consisted of the bills of Runyon & Sons, the shipwright, the painters' bill, bill for materials, blacksmiths' bill, furniture, poles, stoves, &c., &c., for the boat. We paid all these bills on account of Mr. Hewitt, Runyons and Sons' bill was about seven hundred and ten dollars. I had at one time the vouchers by the receipted bills for each of these items, making in all about ten hundred and fifty to eleven hundred and fifty dollars. They were in our possession and were burned at the fire that burned our office that I have testified about.

Previous to that time a Mr. Henry, a lawyer in Philadelphia, came to see me in relation to these items, and I read off to him the amount and the purpose for which they were paid, and he put them down upon a piece of paper. He put them down as I read them
107 off from the originals. These originals are all now destroyed.

Paper attached and marked B.—J. L. C.

This paper (paper produced marked B) is the paper that I recognize, upon which he put down these items, and I recognize the items and the amounts as correct. This list comprises the bills, and the amounts of them paid out by us to Runyon and Sons, and others for their repairs, which were caused by the accident. We paid Runyon his bill, and paid the others also, and the amounts were considered by us as fair and necessary to repair the boat. There were

in all some dozen bills or more. This was the amount actually paid out apart from anything else.

To the seventh interrogatory he saith: Mr. McGuire, of our firm, personally superintended the raising up the barge. Our firm had the matter in charge. We also had a second man there named Wood. I saw her as soon as she was raised, and was there from time to time.

JOHN L. CADWALADER, *Commissioner.*

108 When raised, she was broken in two; twelve of her bottom timbers were broken entirely off. When she sank, her bow was up on the beach, and her stern sank down with deeper water, and her back was broken.

The bill paid to raise her, and the amounts paid out to put her in condition were in my opinion necessary to put the barge in running condition. I would not have done any more than I had to do, and all this I thought necessary.

JAMES T. EASTON.

Taken, read over and subscribed and sworn to before me this 9th day of April, in the year 1868.

JOHN L. CADWALADER, *Commissioner.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, John L. Cadwalader, the commissioner above named, do hereby certify that the above witness, James L. Easton, prior to the
109 taking of such deposition, was by me duly sworn in the said matter named in said commission, and the said witness was thereupon interrogated upon the said interrogatories separately, and examined on the same, and the said examination reduced to writing by me at my office, No. 45 William street, in the city of New York, and the same signed and sworn to by the said witness in my presence this ninth day of April, in the year eighteen hundred and sixty-eight.

JOHN L. CADWALADER, *Commissioner.*

NEW YORK, *May* 1, 1865.

Boat L. Newman

To H. J. Hewitt, Dr.

To McFadden's expenses to Florence	$5 00
" paid Thos. Seward bill for labor	192 00
" " " " " "	66 00
" " steam-tug Ella	60 00
" " " "	45 00
110 To tug towing at Florence	5 00
" boat H. H. Durkee, Capt. Thos. C. Wright	141 20
To bows, handles and twine	5 10
" watching boat Newman	15 00
" lumber	8 70
" use small boat	3 50
" " boat Cleveland, 7 days @ $15	105 00

To	328 lbs. Manilla rope, @ 22 c	72 16
"	labor per T. McGuire	77 31
"	50 empty casks	50 00
"	T. McGuire, superintending	100 00
"	use boat Saranac, commencing April 13, and ending May 22nd, 40 days @ $10 per day	400 00
		$1,350 97

Which is endorsed as follows:

At the execution of the within commission the within paper was produced and identified by the witness, examined and duly marked exhibit A, and is attached to said commission.

JOHN L. CADWALADER,
Commissioner.

111

1866.			
June 23.	Paid Runyon & Co. for repairs	$710 66	
	" painting bill		
17.	" McGuire, repairs, superintending	45 96	
21.	" " " "	2 10	
		13 31	
24.	Chock for Walbridge	32 50	
"	Putty and oil	23 77	
	Blacksmith	27 55	
29.	Castings	13 32	
July 1.	Mason, paints	30 00	
5.	" "	10 00	
6.	Paint	98 88	
6.	Mason, in full	31 15	
May 13.		15 00	
	Expenses, or raising		$1,350 97

Number of days raising .....
" " " under repair .....

Endorsed as follows:

At the execution of the within commission the within paper was identified by the witness, examined and produced, who testified in relation thereto, and was duly marked exhibit B, and attached to the said commission.

JOHN L. CADWALADER,
Commissioner.

The execution of the within commission appears by certain schedules hereto annexed.

JOHN L. CADWALADER,
Commissioner.

112 And afterwards, to wit, on the twentieth day of May, anno Domini 1868, the commissioner comes into court and files his report, which being read is in the words and tenor following, to wit,

To the Honorable Robert C. Grier, judge of the said Circuit Court:

The undersigned, to whom it was referred "to calculate damages, adding to loss of freight, as already stated, the amount for which the vessel injured could have been repaired," having availed himself of the testimony (taken under commission in New York) of James T. Eaton, one of the firm of Eaton, McMahon & Co., of New York, the person directly connected with raising the barge "L. Newman," says that, with all proper appliances, it took about 20 days to raise the vessel and cargo. The expenses of raising the barge and cargo, and towing her to New Brunswick, (where the repairs were made,) amounted to $1,350 97-100; while the total cost of said repairs
113 amounted to $1,054 20-100. I am of opinion that this charge is not at all excessive.

The barge remained idle until some time in May, or about 20 or 30 days after she was raised, and prior to the sale by the U. S. marshal for salvage claim under order of U. S. District Court for New Jersey. I am of the opinion that the interval of time should not be a charge against the respondents. Altho' there is no specification for the time occupied in the repairs, I am satisfied that 20 days was ample time to put the said barge in order for business. I therefore allow 20 days for raising and 20 days for repairs as the loss for employment of the said barge. From the best information I could obtain, $12 per diem (in 1865) was about the value of that class of vessels, and I believe this charge to be proper.

Under the above views the amount of damages for libelants will stand thus, to wit:

To cost of repairing barge "L. Newman," $1,054 20, less ⅓ deducted, as customary, diff. new for old; or	
114 351 40-100	$702 80
The cost of raising the barge was $1,350 79-100, and is chargable to general average; the contributory value of vessel, freight and cargo, is $7,697 11-100, or 17.55 p. c.; the vessel's portion thereof is	352 40
Loss of freight, as before shown	509 71
Loss of employment during time necessary to raise and repair, 40 days, at $12 per day	480 00
	$2,044 91
To interest from M'ch 25th, 1865, to date of final decree, months days, at 6 p. c. per annum	$

The shipper of the cargo advanced $275 to the master of the barge, which amount is to be refunded to the said shipper or his representatives.

Respectfully submitted.

JOHN H. YOUNG,
Commissioner.

May 15th, 1868.

The commissioner respectfully reports that he has notified the advocates and proctors of the respective parties of his intention to file the above report on the 20th inst.

115 Eo die, the proctor for the respondents files his exceptions to the commissioner's report, which said exceptions being read, are in the words and tenor following, to wit:

The respondents in this suit except to the report of the commissioner appointed to assess the damages therein, in this:

That the report is not in accordance with law, and that the same is not supported by the evidence submitted.

Eo die, the proctors for the libellants come into court here and file their exceptions to the commissioner's report, which being read, are in the words and of the tenor following, to wit:

Exceptions on behalf of libellants to the report of John H. Young, commissioner.

1. Because the commissioner, in reporting the damage to
116 the barge L. Newman, has deducted $351 40 from the amount of repairs, being ⅓ of $1,054 20-100, as the difference of new for old.

2. Because the amount of the award in the principle stated by the commissioner, after correcting the error, as stated in the first exception, should be for two thousand three hundred and ninety-six 31-100 dollars, (2,396 31,) with interest from the time stated in the report, instead of two thousand and forty-four 91-100 dollars, (2,04491, as reported by the commissioner.

Whereupon afterwards, to wit, on the twenty-fifth day of May, in the year eighteen hundred und sixty-eight, the commissioner aforesaid comes into court here and submits his report on the exceptions of counsel and his supplemental report, which being read, are in the words following, to wit:

117 MAY 21ST, 1868.

The counsel for respondents except to the report of the commissioner, in this, "that the report is not in accordance with law, and that the same is not supported by the evidence submitted." Having carefully examined said exceptions, the commissioner sees no reason for any change in the views already presented.

MAY 22ND, 1868.

The counsel for libellants having excepted to the report of the commissioner, "because the commissioner, in reporting the damage

to the barge 'L. Newman,' has deducted $351 40-100 from the amount of repairs, being ⅓ of $1,054 20-100, as the difference of new for old." The commissioner, after careful examination of said exceptions, begs leave to present a supplemental report, to wit:

The commissioner, in assessing the amount of damages in the above cause, followed the rule established, in all cases, by
118 the various insurance companies throughout the commercial world, viz: that of deducting ⅓ of the amount of repairs as the difference in value between the new and old material. This principle, and the opinion of one of the counsel for libellant that such is the rule, induced no hesitancy in awarding the damages on that basis. Subsequent investigation, however, has satisfied the commissioner that in cases such as the present he is in error, and that the ⅓ rule does not apply. The commissioner, therefore, desires to correct the amount assessed in his former report, by adding thereto $351 40-100, (the amount of the ⅓ deduction,) making the damages $2,396 31-100, exclusive of the accrued interest.

Respectfully submitted.

JOHN H. YOUNG,
Commissioner.

May 23d, 1868.

119 Whereupon afterwards, to wit, on the twenty-fifth day of May, 1868, upon reading the commissioner's report—

It is ordered, that the respondents' exceptions be dismissed, and that a decree be entered for libellants for two thousand three hundred and ninety-six dollars and thirty-one cents, ($2,396 31,) with interest from the date of the original decree in this court.

And afterwards, to wit, on the third day of June, in the year last aforesaid, respondents, by Robert P. Kane, esq., their proctor, enter the following appeal, which, being read, is as follows, to wit:

"*The Admiral Farragut.*"

U. S. CIRCUIT COURT, *June 3rd*, 1868.

MY DEAR SIR: The respondents in this case will enter their appeal to the Supreme Court. Be good enough to see that the bill of
120 costs, enclosed, is correct. George W. Fisher will enter as bondsman for the court above.

Yours, truly,

ROBERT P. KANE.

Benjamin Patton, Esq., Clerk, &c.

121 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I. Benjamin Patton, clerk of the Circuit Court of the United States in and for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings in a certain appeal in admiralty lately

depending in said court, wherein Richard Sutliff, owner and master of the barge L. Newman, and others are libellants, and the steam-tug Admiral Farragut and Isaac Albertson and George Wood, owners thereof, respondents.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia, this fifteenth day of August, A. D. 1868, and in the ninety-third year of the independence of the said United States.

[SEAL.]

BENJ. PATTON, *Clerk.*
Per W. GRIER HIBLER,
Deputy Clerk, C. C., U. S.

[5 ct. revenue stamp, cancelled.]